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PRINCIPAL CONCLUSIONS OF THE AD HOC WORKING GROUP AT ITS SECOND SESSION IN PREPARATION FOR A LEGAL INSTRUMENT ON BIOLOGICAL DIVERSITY OF THE PLANET

Report by the Chairman

I. INTRODUCTION

1. The need was emphasized in the debate for a new international legally-binding framework instrument on the conservation of biological diversity. The following should be considered in the process of developing such an instrument.

II. NATURE OF AN INTERNATIONAL LEGAL INSTRUMENT

2. The aim of such a legal instrument should be to engage concrete and action-oriented measures for the conservation and sustainable utilization of biological diversity. There was a general agreement that:

(a) As much technical, financial and administrative content as possible with commitments for implementation should be included in the body of the framework instrument. It should have under its umbrella legally-binding protocols focusing on concrete issues and as far as possible these should be concluded and signed concurrently with the international legal instrument itself;

(b) The new framework international legal instrument should address the full range of biological diversity at the intra-species, inter-species and both terrestrial and aquatic ecosystems levels. Both in-situ and ex-situ conservation aspects should be included;

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(c) The new framework international legal instrument, through appropriate funding, administrative and other mechanisms, should build upon, co-ordinate and strengthen existing international legal instruments, agreements, mechanisms and action plans on biological diversity. It must cover the gaps in conservation conventions and avoid duplication and competition for the limited resources among the conventions. Co-ordination between the proposed international legal instruments on biological diversity and climate change is also needed;

(d) The new framework instrument should not explicitly exclude aspects already covered by existing conventions. Duplication should be avoided by providing, inter alia, a co-ordination mechanism;

(e) The ideas expressed on page 3 of the report of the Informal Meeting of Secretariats of International Conventions relating to biological diversity (14-15 December 1989), inter alia, those concerning the role of the Secretariat of the international legal instrument as an information centre for the activities of other secretariats or acting as a central body for promoting co-operation among existing conventions, should be examined and possibly pursued;

(f) The principle of refraining from action that may be harmful to biological diversity in other States should be included; and the obligation to prepare environmental impact assessments for projects having a potentially harmful effect on biological diversity was also recommended.

III. GLOBAL CONSERVATION NEEDS AND COSTS

3. There was a general agreement that the following areas represent basic conservation needs that would lead to measures of implementation and funding through adoption of the new international legal instrument:

(a) Surveys, inventories and identification of biological diversity-rich areas and areas under threat, as well as of technologies and techniques related to the conservation and sustainable use of biological diversity;

(b) Technical assistance for research, training, education, public awareness campaigns, surveys, inventories, etc.;

(c) Management strategies and plans, particularly for biological diversity-rich areas, areas of high endemism, areas under threat, including recovery plans, co-ordination of various conservation activities and networking of protected areas and development of national conservation strategies;

(d) Regular monitoring of the status of the world's biological diversity;

(e) Co-ordination of conservation management strategies and plans with sustainable development policies;

(f) Priority conservation projects,

(g) Needs of existing international legal instruments on biological diversity;

(h) Transfer of technology.

4. The Group also felt it was not in a position to make any meaningful costing of global conservation needs. This will have to be prepared by experts based on the needs identified by the meeting.

IV. FINANCING MECHANISMS

5. There was a consensus that:

(a) Those who enjoy most the economic benefits of biological diversity should contribute equitably to its conservation and sustainable management;

(b) A new partnership should be developed and in this context funding for developing countries should be characterized as co-operation among countries.

6. There was also general agreement that an international legal instrument without firm commitments to funding to meet the conservation costs would be meaningless.

7. There is a need for sufficient new and additional funds to achieve conservation of biological diversity and that, in a spirit of common responsibility, the costs of conservation should not fall disproportionately upon countries with significant biological diversity.

8. Funds are needed to cover: (i) secretariat administrative costs; (ii) global conservation needs; (iii) development and transfer of new technologies and techniques, including biotechnologies, to improve the utilization of biological resources on a sustainable basis and in accordance with national goals; (iv) national and international efforts to promote the concept of sustainability in the use of biological diversity, including its development through appropriate technologies; and (v) strengthening existing international legal instruments and activities on biological diversity when their basic objectives and/or activities are very similar or closely linked.

9. Resource for the administration of the legal instrument should be provided by the contracting parties. In addition, innovate mechanisms should be explored at both national and international levels for raising additional funds and/or redistributing existing funds to support conservation and management activities as identified by the Group under the issue of global conservation needs.

10. Whatever the final financing arrangements, there is a need for a special fund management mechanism as part of the international legal instrument.

11. There is a need for close co-ordination of current efforts on global environmental problems, particularly the development of funding arrangements between the two future international legal instruments on biological diversity and climate change, as well as on-going work in the context of the Montreal

Protocol on protection of the ozone layer. This should include examination of existing multilateral mechanisms, such as FAO, World Bank, UNDP, IUCN, and the Consultative Group on Agricultural Research, as well as bilateral mechanisms.

V. ACCESS TO GENETIC RESOURCES AND TECHNOLOGY

12. There was a consensus that:

(a) The full potential of biological diversity can best be realized when genetic resources remain accessible to all users and if technology and information on their use is transferable to all;

(b) Accessibility, including access to knowledge and data, is an important element in conservation and sustainable development of biological diversity;

(c) Free access does not mean free of charge and accessibility should be based on mutual agreement and full respect for the permanent sovereignty of States over their natural resources;

(d) Accessibility to biological diversity, including new varieties, and to related technologies, including conservation technologies, are two sides of one and the same coin and must be an integral part of the planned legal instrument;

(e) Those having jurisdiction and control over genetic resources should receive preferential treatment for access to their germplasm and varieties developed therefrom;

(f) There is a need to examine questions of enforcement, ownership of biotechnology by private and public sectors and the relationship between the whole issue of intellectual property rights, access to genetic resources and access to biotechnology in a spirit of co-operation between gene-rich developing countries and technology-rich developed countries;

(g) There is a need to incorporate in the international legal instrument an innovative mechanism that facilitates access to resources and new technologies, including those in the private sector;

(h) The conclusion of agreements facilitating the acquisition and subsequent sustainable use of genetic resources and guaranteeing mutual benefits for those having jurisdiction and control over the resources as well as for the owners of the technology should be encouraged.

VI. RELEASE OF GENETICALLY MODIFIED ORGANISMS AND ALIEN SPECIES INTO THE ENVIRONMENT

13. An international legal instrument on the conservation of biological diversity should contain provisions on the need for strict regulation on a national basis of intentional or accidental release into the environment of genetically engineered organisms and alien species.

VII. POLLUTION

14. A new legal instrument on the conservation of biological diversity should not attempt to resolve general problems connected with pollution, but should reflect some of the major principles and specifically address the most relevant pollution problems.

VIII. STUDIES TO BE DONE

15. Studies are needed on the following as a means of responding to specific issues in the process of developing the new legal instrument: (i) the cost of conserving biodiversity; (ii) fund-raising mechanisms; and (iii) the relationship between intellectual property rights and access to genetic resources and biotechnology.